

ZBA hears dispute over enforcement

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As Zoning Board of Appeal Chairwoman Judi Barrett had to repeatedly remind the room, the matter at hand was one of narrow scope — does the ZBA have the jurisdiction to hear the Planning Board's appeal of a building permit. But it was obvious during a public hearing Thursday night that the bigger issues of what is the definition of an accessory building, and has Director of Inspectional Services Scott Lam-

biase issued building permits in error, is far from resolved.

The hearing on Thursday was a continued public hearing on a property at 21 River Lane, where the Planning Board says a permit was issued for a structure that doesn't conform to the rules of an accessory building. Duxbury's bylaws do not allow two homes on one lot, but there has been some confusion over the past couple of years as to what the definition of a secondary —

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Zoning enforcement at issue

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or accessory — structure is.

The homeowner was not present at the hearing, but her attorney, Paul Driscoll, came to argue that the Planning Board filed the appeal too late and the matter shouldn't be before the ZBA at all.

At issue are some confusing timelines. There is a 30-day limit to appeal a building permit, although a board or resident can ask for zoning enforcement at any time. The Planning Board says they did not realize a building had started construction until after the deadline had passed. Driscoll said that the property had been discussed at a staff meeting involving Town Planner Tom Broadrick and other officials — but even that is complicated because minutes aren't taken at those meetings the way they are at planning or zoning board meetings.

Broadrick said the Planning Board has been talking about the overall issue of zoning enforcement and incorrectly issued permits for months, and that was the subject of the meeting, but the issue of River Lane specifically did not come up.

"There's a lot of people who don't think the Director of Inspectional Services was issuing permits properly ... we tried to address it internally," said Broadrick. "I didn't know about 21 River Lane. It wasn't on my radar, or I would have put it on my agenda."

"Yes, the Planning Board has been concerned about zoning violations," added Planning Board Chairwoman Amy MacNab. "That is on the record, all over the place. It is of no surprise to anyone we have been following these issues ... for some time."

Former selectman Ruth Row-

ley suggested that the 30-day rule didn't come from a state law but from a court case and therefore didn't apply to Duxbury. She also urged the board to keep the larger issues in focus and said the zoning rules were being ignored.

"Somewhere or other we've gotten off the track of what's required in our zoning bylaw," she said. "This is not the fault of the people who bought that property, it's the fault of the town ... This town is not going to be able to maintain because we lost our way in abiding by what we set as a framework."

Driscoll also sent a letter to the board asking the member and former chairman Dennis Murphy recuse himself from voting on River Lane, saying that he was present at the disputed meeting.

Murphy said he consulted with the State Ethics Commission and was told there was no reason for him to step away. However, he did not participate in the discussion and abstained from the final vote.

In summing up, Driscoll said that the Planning Board was unfairly targeting his client.

"This is the wrong case, brought by the wrong party at the wrong time, on the wrong property for the wrong reasons," he said. "The Planning Board has a dispute with Mr. Lambiase ... that's fine. The evidence clearly shows that what they did here is in total disregard of the interest of [the property owner.]"

The Zoning Board eventually voted to accept jurisdiction and move forward with the case.

"It's a close call, but given that the evidence seems to tip in favor of the Planning Board not having [knowledge of the River Lane property before the deadline,]" said ZBA member Michael

Gill. "I think they have successfully rebutted the challenge."

He said that Driscoll was hanging his case on a statement made by Lambiase as well as a list of disputed properties that didn't seem to exist in any official minutes.

Barrett said she felt the same way.

"The documents suggest that River Lane did not come up in discussions that took place within that 30-day period," she said. "I could make that decision if I had persuasive evidence in front of us by I don't."

The hearing was continued to Nov. 18 so that the board can rule on the actual matter of the potential violation.

After the meeting, MacNab took issue with a suggestion by Driscoll that his client felt intimidated.

"I would hope that the residents of this town would feel if they need to request zoning enforcement. ... there's a process to do that. This process doesn't need to be filled with intimidation and threats," she said. "As Planning Board members we do have an agenda. We have total regard for the residents of this town. That's our agenda."

Gill told MacNab that Driscoll was just doing his job and that he had argued convincingly — just not enough to convince the ZBA members.

"Don't take it personally. He's just doing his job and he's doing it well," Gill said.

"I feel sorry for these people who end up in this situation," said Jean Clark, who was in the audience. "I don't feel punitive at all. I think the process is broken, clearly."